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IN THE

SUPREME COURT OF THE UNITED STATES

_____ TERM, 1970

NO. 1429

DAVID FRANKLIN JOHNSON
and DIANE ALANE JOHNSON,

Petitioners,

vs.

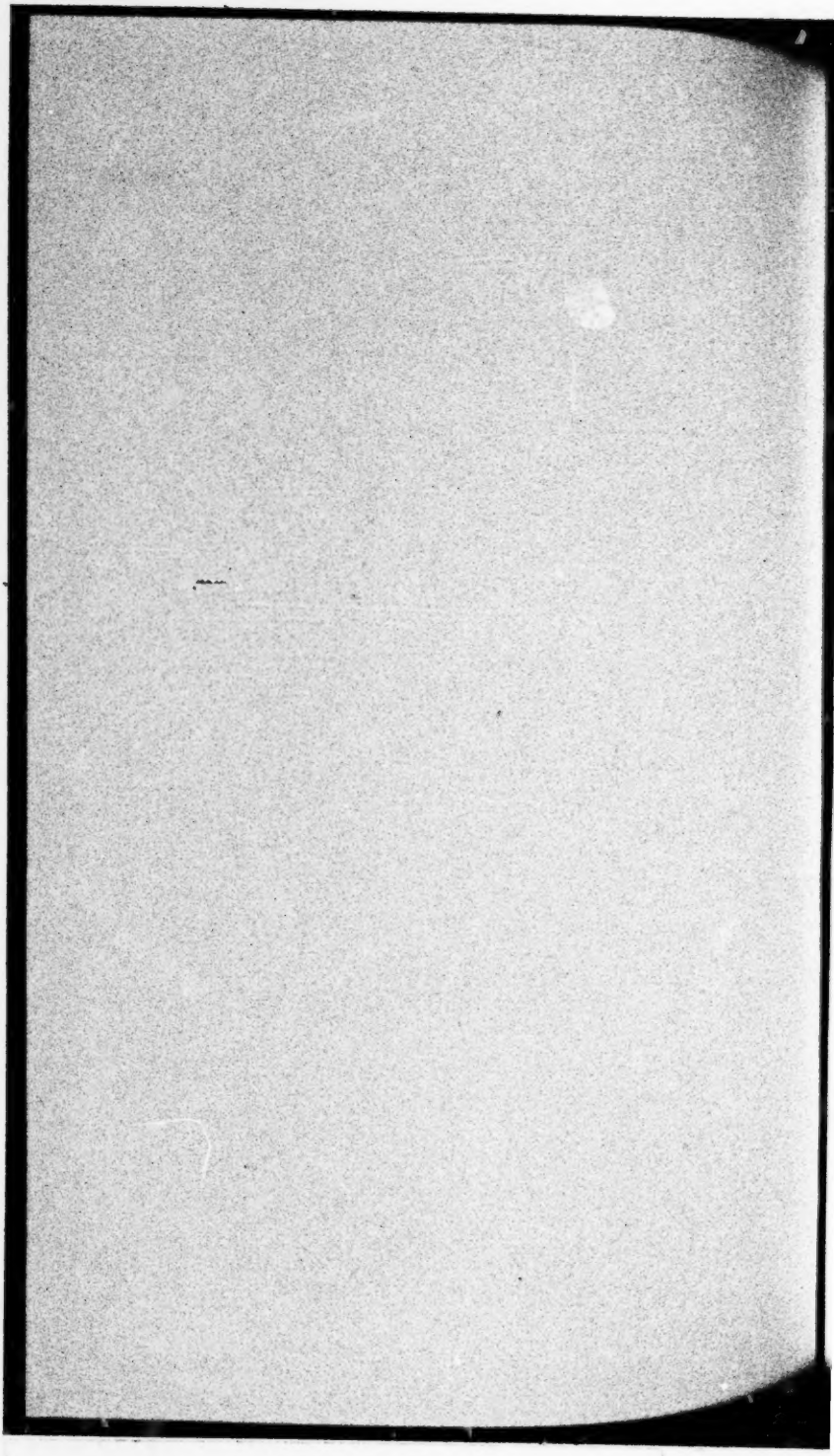
SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SANTA BARBARA AND THE PEOPLE OF THE STATE OF CALIFORNIA, THE REAL PARTY IN INTEREST,

Respondents.

PETITION FOR WRIT OF CERTIORARI

MANUEL H. MILLER
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Sherman Oaks, Calif. 91403
(213) 784-9993

Attorney for Petitioners



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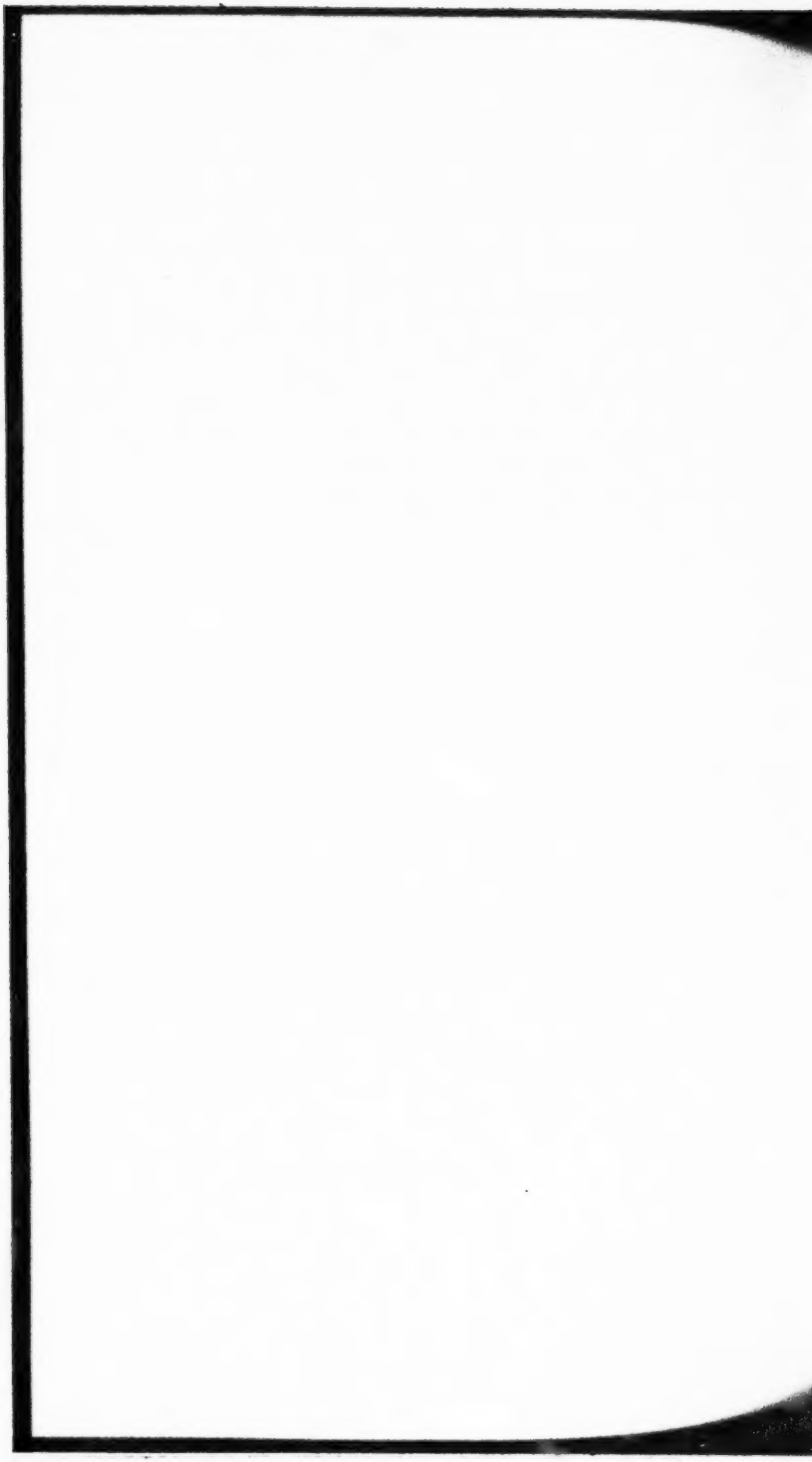
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CALIFORNIA, THE REAL PARTY
IN INTEREST,

Respondents.

PETITION FOR
WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE
WARREN BURGER AND TO THE HONORABLE
ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

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Comes now David Franklin Johnson and Diane Alane Johnson and petition this Court for a writ of certiorari directed to the Supreme Court of the State of California to grant a hearing to determine whether petitioners are entitled to a Writ of Mandate directing respondent Superior Court of the State of California for the County of Santa Barbara to suppress evidence under California Penal Code, Section 1538.5.

JURISDICTION

Jurisdiction is conferred by Title 28, Section 1257(3), United States Codes.

DECISION BELOW

The Supreme Court of the State of California denied a hearing for petitioners, without written opinion, on January 21, 1970.

The Court of Appeal of the State of California, Second Appellate District, denied petitioners' Writ of Mandate, without written opinion, on December 23, 1969.

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CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment, United States Constitution:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourteenth Amendment, United States Constitution:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

THE FACTS

On July 23, 1969, officers of the Santa Barbara Sheriff's Department received information from Guido Hanak, a maintenance supervisor for the I.P.M. Realty Company in Santa Barbara, California. He informed the officers that he had found a sub-machine gun and had seen hundreds of pills in Apartment 11, 6778 Abrego Road, Santa Barbara, California. This apartment had been rented by a man listed as David Jaye on July 8, 1969 and the rent was paid in full until August 8, 1969. Hanak obtained his information from cleaning personnel he had sent to clean the apartment on July 21, 1969. The maintenance man had reported to Mr. Hanak on July 21, 1969 that various boxes and a suitcase were in the closet of the northwest bedroom.

Upon learning of this information, the officers began a surveillance of the apartment. A search warrant was obtained and a 24-hour surveillance was begun inside the apartment. At 11:30 A.M. on July 24, 1969, petitioner David Franklin Johnson and Robert L. Wilson were arrested inside the apartment.

Under the search warrant obtained on July 23, 1969, the suitcase and three unopened cardboard boxes were taken from the apartment. These boxes and the suitcase contained a portion of the evidence sought to be suppressed by petitioner David Franklin Johnson.

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On July 24, 1969, officers of the Santa Barbara Sheriff's Department obtained a search warrant for the residence at 4693 Atasco Drive, Santa Barbara, California. This was the residence of petitioner David Franklin Johnson. The affidavit in support of the search warrant was based on the affiant's beliefs that the quantity of drugs seized at Apartment 11, 6778 Abrego Road, Santa Barbara, California, indicated a major supplier of dangerous drugs and narcotics, and that major suppliers of dangerous drugs usually maintain their major stock in a location other than their residence and they maintain a small stock available for immediate sale within or in close proximity to their residence. There was no evidence other than his arrest and a hearsay statement that David Franklin Johnson was a major supplier of illegal drugs.

On July 24, 1969, at approximately 7:15 P.M. officers of the Santa Barbara Sheriff's Department went to 4693 Atasco Drive, Santa Barbara, California, arrested petitioner Diane Alane Johnson, and seized a small amount of narcotics.

On November 3, 1969, a hearing on petitioners' motion to suppress the aforementioned evidence under California Penal Code, Sections 1538.5 and 995 was held in Superior Court, in and for the County of Santa Barbara. All motions were denied.

On November 20, 1969, petitioners filed a Petition for Writ of Mandate in the Court of

Appeal of the State of California, Second Appellate District. The constitutional issues of violation of the Fourth and Fourteenth Amendments were raised in that court. The Petition for Writ of Mandate was denied.

The violation of the Fourth and Fourteenth Amendments was raised in a Petition for Hearing in the Supreme Court of the State of California. The Court refused to grant said hearing.

QUESTIONS PRESENTED

1. Whether police officers had the right to enter the premises of 6778 Abrego Street, Apartment 11, Santa Barbara, California.

2. Whether an affidavit in support of a search warrant lacks probable cause when it is based upon information provided by a citizen informant whose reliability is unknown, and contains no facts within the personal knowledge of the affiant.

3. Whether a citizen has the right to conduct a search that would be unconstitutional if made by a police officer.

4. Whether police officers had the right to enter the premises at 4693 Atasco Drive, Santa Barbara, California.

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5. Whether a search warrant is based on probable cause when in fact there was nothing to link petitioners' residence to narcotics, other than affiant's unsupported belief that major suppliers of narcotics usually keep a small supply in or near their residence.

REASONS FOR GRANTING THE WRIT

The acts of Detectives Bregante, Piceno and Moore in entering the leased premises, to wit: 6778 Abrego Road, Apartment 11, Santa Barbara, California, on July 23, 1969, constituted an illegal search in violation of defendants' rights guaranteed by the Fourth and Fourteenth Amendments, in that there was no probable cause for the issuance of a search warrant. The issuance of the warrant was based solely upon the statements of Mr. Guido Hanak.

The entry of the aforementioned officers was based upon an Affidavit in Support of Search Warrant filed on July 24, 1969, in the Municipal Court, Santa Barbara-Goleta Judicial District. The Affidavit of Officer George J. Bregante is based upon information received from one Guido Hanak.

There has been no showing in this case that Hanak, a citizen informant, provided reliable information upon which a search

warrant could be based. The Affidavit supporting a search warrant must contain some underlying factual information from which the issuing judge can reasonably conclude that the informant was credible or his information reliable. People v. Tillman, 236 Cal. App. 2d 134.

It is clear that a warrant may not stand if the affidavit is based upon information provided by an informant and fails to state facts from which the magistrate could reasonably conclude that such information is reliable. United States v. Ventresca, 380 U.S. 102, 85 S. Ct. 741.

In the case of Willson v. Superior Court, 46 Cal. 2d 291, 294 P. 2d 36, the Court stated that,

> "In some cases the identity of, or past experience with, the informer may provide evidence of the reliability of the information, and in other cases it may be supplied by similar information from other sources or by the personal observations of the police."

Evidence must be presented to the Court that would justify the conclusion that reliance on the information was reasonable. People v. Govea, 235 Cal. App. 2d 285, 45 Cal. Rptr. 253.

In the case at bar, there was no showing that police reliance on an informant was

reasonable. There is no showing that police had any prior dealings with Guido Hanak or that Hanak had actually taken the automatic weapon from the leased premises in question. Additionally there is no statement that police had any personal observation of the premises prior to the issuance of the warrant.

There are many cases which hold that a private citizen is not subject to the limitations of the Fourth Amendment, and that it applies only to a sovereignty and its officials. The leading case on this is Burdeau v. McDowell, 256 U.S. 465 (1921).

However, the issue before the Court in this case is whether the entrance of the sovereignty by way of the aforementioned private individuals makes the search illegal.

In the Civil Rights Cases, 109 U.S. 3, 3 S. Ct. 18, the Supreme Court pointed out that the Fourteenth Amendment makes void state action of every kind which is inconsistent with the guarantees therein contained and extends to manifestations of state authority in the shape of laws, customs or judicial or executive proceedings.

State action, as that phrase is understood for the purposes of the Fourteenth Amendment, refers to exertion of state power in all forms. And when the effect of that action is to deny rights, subject to the protection of the Fourteenth Amendment, it is the obligation of the Court to enforce the constitutional commands.

That the action of the State Courts and of judicial officers in their official capacities is to be regarded as action of the state within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court. Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836. In the Shelley case, the Supreme Court held that it was violative of the Fourteenth Amendment for a state to compel a private citizen to perform a contract which required racial discrimination in the sale of real estate, i.e. they were asked to compel the citizen to do an act which would be unconstitutional for the state to perform.

In the case of Barrows v. Jackson, 346 U.S. 249, 73 S. Ct. 1031, the Supreme Court declared:

> "To compel respondent to respond in damages would be for the state to punish her for her failure to perform her covenant to continue to discriminate against non-Caucasians in the use of her property. The result of that sanction by the state would be to encourage the use of restrictive covenants. To that extent the state would act to put its sanction behind the covenants. The action of a State court at law to sanction the validity of the restrictive covenant ... would constitute state action as surely as it was state action to enforce such covenants in equity as in the case of Shelley v. Kraener, supra."

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In Hughes v. Superior Court, 339 U.S. 460, 70 S. Ct. 718, the Supreme Court upheld the right of the California Courts to enjoin picketing a place of business for the purpose of securing submission to a demand for employment of Negro clerks in proportion to the number of Negro customers. Here again the court enjoined the exercise of a practice, picketing, which is lawful in itself, because it was being used to subvert state policy against involuntary employment on racial lines.

In the case of Gomillion v. Lightfoot, 364 U.S. 339, 81 S. Ct. 125, the Supreme Court of the United States held that "Acts generally lawful may become unlawful when done to accomplish an unlawful end, and a constitutional power cannot be used by way of condition to attain an unconstitutional result."

In the case at bar we are attempting to allow the acts of private citizens to cure that which would be illegal if done by the state. We are asked to give evidentiary status to items that except for the intervention of private citizens would be inadmissible. The basis of the Fourth Amendment is protection against invasions of privacy. To allow private citizens to search is to ignore the underlying basis of the Fourth Amendment because an unconstitutional invasion is being sanctioned by the state. The police are obtaining the search warrant based upon the acts of private individuals. To allow this would in effect cancel out the protections of the Fourth Amendment. The citizen whose home is being searched is afforded no remedy

other than his suit for damages, which can in no sense recompense him for the harm he has suffered. This will take all of the teeth out of the Fourth Amendment protection and allow the combination of private citizen and police to make the protection of the Fourth Amendment a nullity.

The Burdeau case, supra, and the cases that follow it were not faced with the issue of the search of a person's residence. In the case of United States v. Goldberg, 206 F. Supp. 394, defendants' employees stole certain employee records and turned them over to the government. In Commonwealth v. Tanchyn, 200 P.A. Super. 148 (1963), a blood sample had been taken from his arm by a doctor when the defendant was almost unconscious. In the case of Knotts v. State, 187 N.E. 2d 571 (1963), special police officers hired by and paid by a store to detect shoplifting observed defendants through a one-way mirror as they removed items from the counter and hid them on their persons. In the case of People v. Johnson, 153 Cal. App. 2d 870, 315 P. 2d 468, an employer who suspected his employee of stealing from him borrowed the employee's car with the latter's consent. After driving out of sight, he stopped and searched the trunk of the car, discovering numerous stolen items. In the case of People v. Randazzo, 220 Cal. App. 2d 768, 34 Cal. Rptr. 65 (1963), evidence obtained by a store detective after observation of defendant in a dressing room was admitted into evidence.

There is no California case which states

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that a private citizen can search a residence, perform an act which would be unlawful if done by the sovereign, and that the evidence would be admissible. The information in the case before us is the result of an illegal search which must taint the search warrant or overrule for all times the Fourth Amendment.

The state has in the instant case violated the Fourth and Fourteenth Amendment by an unreasonable search and seizure of the petitioners' premises located at 6778 Abrego Road, Apartment 11, Santa Barbara, California.

The search warrant in this case was based solely upon information provided by a citizen informant. There was no showing that police reliance on this informant was reasonable. There is no showing that police had any prior dealings with Guido Hanak or that Hanak had actually taken the automatic weapon from the leased premises in question. Additionally there is no statement that police had any personal observation of the premises prior to the issuance of the warrant.

Enforcement by state courts of this search by private individuals constitute state action which violates defendants' constitutional rights against illegal search and seizure. The sovereignty should not be allowed to benefit from the acts of private individuals since the acts would be unconstitutional if done by the sovereignty itself. The admission of evidence obtained as the result of a search by private individuals will take the teeth out of Fourth Amendment

protections, since it would be allowing a combination of police and private individuals to do what the constitution prevents the police alone from doing.

The acts of Detective Edward Piceno, and other unidentified officers in entering the premises located at 4693 Atasco Drive, Santa Barbara, California, on July 24, 1969, constituted an illegal search in violation of defendants' rights guaranteed by the Fourth and Fourteenth Amendments.

The entry of the aforementioned officers was based upon an Affidavit in Support of Search Warrant filed on July 24, 1969, in the Municipal Court, Santa Barbara-Goleta Judicial District. The Affidavit of Detective Edward Piceno is based on a prior search at 6778 Abrego Road, Apartment 11, Santa Barbara, California, and upon a statement by Sgt. George Evans of the Santa Barbara Police Department and the Affiant's own experience.

In the case of Aguilar v. State of Texas, 378 U.S. 108, 84 S. Ct. 1509, the supporting affidavit set forth a police officer's belief that petitioner kept narcotics for sale at a particular address. A belief based on unspecified information from a reliable informant and on unspecified observation of the premises by the police. In holding that the affidavit did not establish probable cause, the Supreme Court said that the unamplified conclusion of a reliable confidential informant was an inadequate foundation from which to launch a search

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warrant. The facts supporting the informant's conclusion must be sufficiently developed in the affidavit to enable the issuing magistrate to judge for himself the persuasiveness of the information relied upon for probable cause. The affidavit in Aguilar failed to show that the police officer or his source had any personal knowledge of the matter set forth in the affidavit. For all that appeared said the Court, the source may have merely suspected the presence of narcotics in petitioners' possession.

In Jones v. United States, 362 U.S. 257, 80 S. Ct. 725, the Court stated that the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where they claimed they were and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed, was credible or his information reliable.

In the case of People v. West, 237 Cal. App. 2d 801, 47 Cal. Rptr. 341, the Court stated the following:

> "Is there in this case sufficient other information corroborating that of the informant to establish probable cause? It is, of course, possible for the informant's bare conclusion to be buttressed by secondary information which itself does not amount to probable cause but which fortifies the first, and

for the two in combination to provide sufficient cause for the issuance of a search warrant.

"The difficulty with the case at bar is that the supporting affidavit contains no other probative information from which to infer that West was selling marijuano or keeping it in Apartment 3. A record of prior narcotics' convictions does not corroborate a charge of present narcotics' violation. The validity of the search warrant rests on the naked supposition that the conclusion of a reliable informant provides probable cause to issue a warrant, a supposition which the United States Supreme Court has rejected. Additionally, we find that the supporting affidavit did not furnish sufficient probable cause for the issue of a search warrant under Article One, Section Nineteen of the California Constitution. Under the rulings of the California Supreme Court a valid affidavit must disclose the source of the information on which reliance is placed, or must set forth some of the underlying circumstances which make the informant's tale more probable than not, or in some other fashion, corroborate an essential fact of the charge."

For an affidavit based on informant's hearsay statement to be legally sufficient to support

issuance of a search warrant, two requirements must be met: (1) Affidavit must allege the informant's statement in language that is factual rather than conclusionary, and must establish that informant spoke with personal knowledge of the matters contained in such statement, and, (2) The affidavit must contain some underlying factual information from which magistrate issuing the warrant can reasonable conclude that informant was credible or his information reliable. People v. Hamilton, 71 A.C. 189, 77 Cal. Rptr. 785 (1969).

Information consisting of untested informant's statement that defendant had delivered marijuana to informant at a specified address, of tested informant's personal knowledge of circumstances tending to show that someone would have marijuana at the house, a fact that defendant resided at the house, and that delivery of marijuana by another person at a nearby point was not sufficient to make warrant effective to authorize search of person of defendant or of automobile which he was seen to occupy more than once, and this marijuana found in the automobile was not admissible against defendant. People v. Scott, 259 Cal. App. 2d 268, 66 Cal. Rptr. 257 (1968).

The Court stated in the Scott case, supra, that an investigation which revealed that a suspect has a narcotic record does not by itself sufficiently corroborate informant's story as to the essential fact, i.e., that the suspect was presently violating the law. Although in determining whether probable cause exists, a

suspect's criminal record is relevant, the officer's discovery that appellant had a narcotic arrest does not justify the conclusion that he then possessed narcotics or sufficiently corroborate the untested informant. The facts thus far considered do not adequately corroborate the story of the untested informant.

In the case of People v. Pease, 242 Cal. App. 2d 442, 51 Cal. Rptr. 448, the court said:

> "The mere fact that information ... comes from a fellow officer as a hearsay statement not based on ... personal observations does not justify the conclusion that reliance thereon is reasonable in the absence of evidence showing that the informant originally transmitting the information to the police was reliable, or that such information had its source in official police files or records. Absent the conditions indicated above, such statements of a fellow officer, being hearsay on hearsay, cannot by themselves constitute reasonable cause or reasonable grounds for police action of the kind here involved."

In determining the sufficiency of an Affidavit for issuance of a search warrant, the test of probable cause is approximately the same as that applicable to an arrest without a warrant, a committment by a magistrate, or an indictment by a grand jury. People v.

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Scoma, 263 A.C.A. 215, 69 Cal.Rptr. 819.

In the case at bar, if defendant, DAVID FRANKLIN JOHNSON were out on bail as the result of the search of Apartment 11, located at 6778 Abrego Road, Santa Barbara, California, would the facts that the affiant had be sufficient to arrest defendant without a warrant? The answer is "no".

"Probable Cause" as the basis for search exists where facts and circumstances within the officer's knowledge and of which they have reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. Williams v. United States, 273 F.2d 781.

Evidence in an illegal search is excluded in criminal prosecutions to secure a meaningful enforcement of the Fourth Amendment. Massiah v. United States, 377 U.S. 201, 84 S. Ct. 1199 (1963).

It is respectively submitted that the supporting affidavit for the issuance of search warrant is merely conclusionary and not based upon fact, and there was no probable cause for entering the premises located 4693 Atasco Drive, Santa Barbara, California. On this basis, any evidence found as a result of this illegal search and seizure should be suppressed on the basis of the cases cited.

The search warrant in this case was based

upon an affidavit which failed to establish probable cause the narcotics were located at defendants' residence, to wit: 4693 Atasco Drive, Santa Barbara, California. The affidavit merely states conclusions by the affiant and there is no independent evidence which could cause a reasonable man to conclude that narcotics were located at the aforementioned residence. The affidavit is based solely upon affiant's conclusion that petitioner, DAVID FRANKLIN JOHNSON was a major supplier of illegal drugs in the Santa Barbara area and that major suppliers usually keep narcotics in their residence. The affidavit fails to state facts upon which Sgt. Evans of the Santa Barbara Police Department concluded that DAVID FRANKLIN JOHNSON was a major supplier of illegal drugs and affiant's conclusion that Johnson must have kept drugs at his home is totally unsupported by evidence that drugs were actually located in his residence. The Magistrate was not presented with facts and evidence that would cause a reasonable man to conclude that narcotics or illegal drugs were located at 4693 Atasco Road, Santa Barbara, California.

We pray that this Court grant certiorari and reverse the judgment below.

Respectfully submitted,

MANUEL H. MILLER

Attorney for Petitioners

APPENDIX "A"

APPENDIX "A"

IN THE MUNICIPAL COURT OF THE SANTA BARBARA-GOLETA JUDICIAL DISTRICT, FOR THE COUNTY OF SANTA BARBARA, CALIFORNIA

COUNTY OF SANTA BARBARA,)
STATE OF CALIFORNIA)

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

Personally appeared before me this 23rd day of July, 1969, George J. Bregante who, on oath, deposes and says that there is just probable and reasonable cause to believe and that he does believe that there is now in the possession of DAVID JAYE on the premises located at 6778 Abrego Road, Apartment No. 11, the following personal property, to wit, automatic weapons and ammunition; dangerous drugs, narcotics and paraphernalia used for unlawfully injecting and smoking a narcotic.

That affiant is a Deputy Sheriff employed by the County of Santa Barbara and presently assigned to the detective bureau. That in such capacity, on July 23, 1969, at approximately 11:15 A.M., your affiant received information via telephone from Guido Hanak, maintenance supervisor for the Income Property Manage-

ment Corporation, that he had observed within the above residence a suitcase containing automatic weapons, ammunition, and a white powdery substance and contained within a closet several cardboard boxes, the top one containing a large amount of white double-scored tablets.

Your affiant proceeded to the Income Property Management Office, 915 Embarcadero Del Mar, Goleta, and made personal contact with Mr. Hanak. Mr. Hanak handed to your affiant one automatic weapon described, as follows: a sub-machine gun, .45 calibre M3A1, US No. 630859. Said automatic weapon was fully assembled and loaded.

Your affiant states that in his experience in the investigation of narcotic offenses, Amphetamine is commonly manufactured and sold on the legal and illegal market as white double-scored tablets and that the narcotic Heroin commonly appears on the illegal market as a white powdery substance. Further that the commission of narcotic offenses continues day and night and it is therefore important that the aforementioned property be seized as soon as possible and your affiant therefore requests that this warrant contain a direction that it may be served at any time of day or night.

That your affiant commenced the actual physical mechanics of preparing this affidavit and attached search warrant on July 23, 1969, at 1:00 P.M.; and your affiant affixed his signature under oath to this affidavit before the

undersigned magistrate at the time and date attested by the said magistrate; the elapsed time reflected herein has been diligently utilized by your affiant in the mechanics of physically preparing these documents, consulting with Deputy District Attorney Gerald A. Sperry of the County of Santa Barbara, in reference to the aforementioned preparation, locating the appropriate magistrate, and transporting said documents to said magistrate for his official action in connection therewith.

Your affiant has reasonable cause to believe that grounds for the issuance of a search warrant exists, as set forth in Section 1524 of the Penal Code, based upon the aforementioned information, facts and circumstances.

That based upon the above facts your affiant prays that a search warrant be issued with respect to the above location for the seizure of said property, and that the same be brought before a magistrate or held under Section 1536 of the Penal Code and disposed of according to law.

/s/ George J. Bregante
Affiant George J. Bregante

Subscribed and sworn to before me this 23rd day of July, 1969.

/s/ Joseph Lodge
JUDGE OF THE MUNICIPAL COURT

APPENDIX "B"

APPENDIX "B"

IN THE MUNICIPAL COURT OF THE SANTA BARBARA-GOLETA JUDICIAL DISTRICT, FOR THE COUNTY OF SANTA BARBARA, CALIFORNIA

COUNTY OF SANTA BARBARA,)
STATE OF CALIFORNIA)

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

Personally appeared before me this 24th day of July, 1969, Edward Piceno, who, on oath, makes complaint, and deposes and says that he has and there is just, probable and reasonable cause to believe that he does believe that there is now in the possession of David Franklin Johnson on the premises located at 4693 Atasco Drive, Santa Barbara, the following personal property, to wit: dangerous drugs, narcotics and paraphernalia used for unlawfully injecting and smoking a narcotic.

That your affiant is a deputy sheriff employed by the County of Santa Barbara and is presently assigned to the detective bureau, narcotic detail.

That on July 23, 1969, the Honorable Joseph Lodge, Judge of the Municipal Court,

Santa Barbara-Goleta Judicial District issued a search warrant for the premises located at 6778 Abrego Road, Apt. 11, Isla Vista. That on July 23, 1969, your affiant served said search warrant on said premises and recovered approximately 200 lbs. of amphetamine tablets; 1 pound of methadrine; 500 tablets of L.S.D.; 200 rounds of .45 ammunition; 85 rounds of .22 ammunition; numerous hypodermic needles and various other items of paraphernalia used for the unlawful injecting of a narcotic.

That your affiant also recovered numerous bags used for packaging the drugs for sale and observed one bag already packaged for sale and containing 1000 amphetamine tablets, and that the 500 tablets of L.S.D. were packaged 100 tablets to the package.

That when the search warrant was served, no person was in or about the premises. That your affiant and other deputy sheriffs thereafter maintained a surveillance of the premises and on July 24, 1969 at approximately 1:00 p.m., two male individuals entered the premises by using a key in the front door and proceeded directly to the closet which had contained the aforementioned dangerous drugs. Said male individuals were arrested and identified as DAVID FRANKLIN JOHNSON, 4693 Atasco Drive, Santa Barbara, and ROBERT LAWRENCE WILSON, 224 W. De La Guerra St., Santa Barbara.

That DAVID FRANKLIN JOHNSON has

been previously identified by Sgt. George Evans of the Santa Barbara Police Department to your affiant as a major supplier of illegal drugs in the Santa Barbara area.

Your affiant further states that in his experience in the investigation of narcotic offenses, the quantity of the dangerous drugs, LSD and methadrine; the packaging material and items already packaged are clearly indicative of a major supplier of dangerous drugs and narcotics; that major suppliers of dangerous drugs and narcotics maintain their major stock in a location other than their residence; that they do however maintain a small stock available for immediate sale within or in close proximity to their residence; that based upon the information contained above it is your affiant's belief that DAVID FRANKLIN JOHNSON and ROBERT LAWRENCE WILSON are major suppliers of dangerous drugs and narcotics in the Santa Barbara area and that as such major suppliers, they have presently within their respective residences restricted dangerous drugs, narcotics and parphernalia used for unlawfully smoking or injecting a narcotic.

Your affiant further states that the commission of narcotic offenses continues day and night and it is therefore important that the aforementioned property be seized as soon as possible before it can be removed or destroyed and your affiant therefore requests that the search warrant contain a direction that it may be served at any time of the day or night.

That your affiant commenced the actual physical mechanics of preparing this affidavit and attached search warrant on July 24, 1969, at 2:00 p.m., and your affiant affixed his signature under oath to this affidavit before the undersigned magistrate at the time and date attested by the said magistrate; the elapsed time reflected herein has been diligently utilized by your affiant in the mechanics of physically preparing these documents, consulting with Deputy District Attorney Gerald A. Sperry of the County of Santa Barbara, in reference to the aforementioned preparation locating the appropriate magistrate, and transporting said documents to said magistrate for his official action in connection therewith.

Your affiant further states that based upon the aforementioned information, facts and circumstances he has reasonable cause to believe and does believe that grounds for the issuance of a search warrant exists, as set forth in Section 1524 of the Penal Code. Your affiant therefore prays that a search warrant be issued with respect to the above location for the seizure of said property and that the same be brought before a magistrate or held under Section 1536 of the Penal Code and disposed of according to law.

Pet. /s/ Edward Piceno
Affiant Edward Piceno

Subscribed and sworn to before me this 24th day of July, 1969.

/s/ Frank P. Kearney
JUDGE OF THE MUNICIPAL COURT